

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1363 of 2003 (SS)

Smt Deepa Sati vs. Union of India

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 6.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1363 of 2003 (SS)

Smt. Deepa Sati w/o late Shekhar Chandra Sati
Village Hartapa, P.O. Ratighat,
District Nainital

..... Petitioner

versus

1. Union of India
2. The Director General, C.R.P.F.
Lodhi Bhavan, New Delhi.
3. Deputy Inspector General, Group Central
CRPF, Rampur (U.P.)
4. The Commandant, 104 Battalion, Rapid
Action Forec, CRPF, Aligarh (U.P.)..... Respondents

Sri C.K. Sharma, Advocate for the petitioner
Sri Vinod Nautiyal, Standing Counsel for Union of India

Dated: 6.11.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to create the supernumerary post and to give the appointment to the petitioner.

Briefly stated that facts giving rise to the present writ petition are that husband of the petitioner was employed in Central Reserve Police force at 104, Rapid Action Force Battalion, Aligarh U.P. and after along ailment he expired in the hospital of CRPF Jadauda, New

Delhi on 22.6.2000. The petitioner has stated that the financial condition of the petitioner's family is not well and as such she applied to the respondents department for her appointment under Dying in Harness Rules. The petitioner was called for medical examination to Group Centre, Rampur and she was found fit for service.

The petitioner has stated that she has made an application to the respondents praying for the appointment under the Dying in Harness Rules on 10.10.2001 but her application was rejected by the respondent no.2 on the ground that there was no post available for the appointment of the petitioner.

The grievance of the petitioner is that the respondents have rejected her application illegally. The purpose of providing the appointment on the compassionate ground is to mitigate hardship due to sudden death of bread earner.

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Shushma Gosai and others vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:

“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be

provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosin appellant 1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today.”

The counsel for the respondent Sri Vinod Nautiyal has stated that the petitioner has been called along with certain documents and a certificate has to be issued by the Red Cross Society, and since the same is not available, therefore, the appointment has not yet been made.

The counsel for the petitioner has submitted that the family of the petitioner is suffering financial hardship due to death of the sole bread earner of the family and it would be in the fitness of things if a member of the family be provided appointment on the compassionate ground subject to the consideration of the financial position of the family. Sri Vinod Nautiyal, counsel for the respondents has informed that the petitioner was asked to get certificate from Red Cross Society so that she may be appointed on the post of nursing assistant. Sri B.S. Khanka, counsel for the Red Cross Society, Uttaranchal has very

fairly has stated that certificate from Red Cross Society of Uttaranchal be issued in favour of the petitioner if she completes the nursing course in accordance with rules.

It has been held in the case of Syed Sujjat Hasan vs. District Judge, Lakhimpur Kheri and others (1999) 1 UPLBEC 7851, as under:

“In the case of Umesh Kumar Nagpal Hon'ble Supreme Court further observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is further, mere death of an employee, in harness does not entitle any member of the family to such source of livelihood. The Government of the authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to offered to the eligible member of the family. The posts in classed III and IV are the lowest posts in non-manual and a manual categories and hence they along can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

As far as the first and third contentions are concerned, I am definitely of the view that the dying in harness Rules on the demise of

a public servant does not vest a substantive right for compassionate appointment to the member of the family of the deceased. What does to be examined by the appointing authority is, the financial position of the family. Whether the family after the death of sole earning member can tide over the financial crisis or not, needs to be enquired into. In the regard making an application at much belated state may raise a presumption that the family was not in financial crisis. “

Considering the financial condition of the petitioner it would not be proper for the respondents to keep this case pending for years. As the petitioner has made an application to the respondents on 28.6.2000 and reminder on 11.11.2001 but the same has not yet been considered.

The respondents are, therefore, directed to consider the application of the petitioner for compassionate appointment under Dying in Harness Rules, within three weeks after the receipt of certified copy of the order.

With the aforesaid observations the writ petition is disposed of.

No order as to costs.

06.11.2003
Dhyani

(Rajesh Tandon, J.)